IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.

WRIT PETITION NO. 2456 OF 2001 .

M/s Kolsite Machine Fabrics Ltd.& anr. Petitioner.
vs.
The Union of India & ors. .. Respondents.

Mr. Rajesh Mehta with Mr. Vastal Verma i/b S.P. Bharti for the petitioner.

Mr.S.M. Shah with Mr. R.C. Master for respondent Nos.1 & 2.

CORAM : V.C.DAGA & J.P.DEVADHAR,JJ.

DATED : 28. 6 .2006.

P.C. :

. The petitioner, claiming to be an importer, imported goods for home consumption on 3rd October 1996/ Petitioner claims to have filed Bill of Entry on 7.10.1996. The same was assessed to Rs.5,74,113/- and Rs. 2,64,379/- determined as customs duty payable on it.

2. The petitioner paid duty with interest thereon on 1.1.1998 i.e. after 14 months. Since the goods were not cleared within 30 days from the date of its landing, the same were disposed of by auction. The Air-port Authority of India vide their letter dated 15.6.2001 informed this fact to the petitioner mentioning thereunder that the action was taken under section 48 of the Customs Act, 1962 ('the Act' for short) only after getting approval from the Customs Authorities.

3. The petitioner is challenging the above act of the 3rd respondent alleging breach of statutory provision of the Act and claiming damages for deprivation of property equal to the purchase price of the goods.

4. Having heard rival parties, the claims set up by the petitioner is essentially against the 3rd respondent. We are at loss to understand how other respondents can be saddled with the liability of damages. In order to answer the question: Whether or not action is legal?, one has to investigate disputed questions of fact which, in our opinion, cannot be gone into in writ jurisdiction. Even assuming for the sake arguments that the petitioner may be justified in his perception, then what is the effect of delayed payment of customs duty i.e. after 14 months on the claim of damages will need adequate consideration, the determination of quantum of damages will also be necessary. All this exercise will not be possible in the writ jurisdiction of this Court. (See Mahant Motidas vs. S.P. Sani ELR 1959 SC 942.)

5. In the case of Padam Kumar vs. Addl.Collector of Customs, AIR 1972 SC 542 the Apex Court in spite of holding the action of the Customs

Authorities illegal in detaining goods; refused to grant relief holding that in the writ jurisdiction no relief could be granted in favour of the petitioner. We quote the finding recorded by the Court reading as under :

> . ..It is only fair and just that the customs authorities who are responsible for this situation should bear the burden;but in this writ petition we cannot give any relief in that regard..."

6. The High Court generally does not enter upon a determination of question which requires an elaborate examination of evidence to establish the right to enforce which the writ is claimed. (see Thansingh Nathmal vs. A. Mazir, Suptd. of Tax, AIR 1964 SC 1419).

7. The petitioner, in our opinion, has an efficacious alternate remedy available by way of suit wherein all the questions raised by the petitioner can be conveniently gone into.

8. In the above view of the matter, we refuse to exercise our discretionary writ jurisdiction in favour of the petitioner.

9. In the result, petition is dismissed in limine, leaving all rival contentions open. No

order as to costs.